Supreme Court, U.S.
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Case No:

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In the

Supreme Court of the United States

THOMAS SHARPE, M.D.

Petitioner

v.

CHARLES P. CONOLE; et al

Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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PUBLISHER'S NOTE:

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OPINIONS AND ORDERS BELOW

The proceeding at the US District Court, Northern District of New York started on June 15, 1999 with filing the Complaint under 42 USCS 1983, and 18 USCS 248. The same time Barbara Storie filed a complaint against defendant -appellee Burkhart under 18 USCS 248 and Medical Malpractice. On August 7, 1999, the Hon. Thomas J. McAvoy dismissed all complaints sua sponte except those under FACE and directed filing of an Amended Complaint against all defendants under FACE. Petitioner's Amended Complaint was filed September 7, 1999. Barbara Storie since died.

The District Court dismissed the complaint against the state defendants on March 31, 2000, but the state defendants stayed in the case.

The District Court dismissed Petitioner's complaint upon failure to allege requisite intent on December 7, 2000. Notice of Appeal was filed January 3, 2001.

On March 22, 2001 the District Court granted leave to file an amanded appeal that included the state defendants. The state stayed in the action.

Appeal pending Petitioner filed a Rule 60 Motion at the District Court to vacate the judgment upon the ground that the defendants killed the first mother inflicting severe internal injuries and gas gangrene. The motion was denied and Petitioner joined the motion under Docket 01-9019.

On July 18, 2001 the defendants inflicted a second mother with the gas gangrene bacterium, Petitioner asked the defendants through the Court to diagnose and treat the mother.

Request denied, Petitioner filed a morion for injunction. The defendants placed the mother on an antithyroid medication that would have seriously injured and probably killed the mother and her baby. Petitioner took the mother out of the defendants' hands and referred her for proper tratment.

Defendant-Appelle Choate died December 23, 2003, Petitioner filed Suggestion of Death on the Record and Motion to Substitute Party. In the Motion for Substitution Petitioner set forth that Choate is not a state defendant and that Choate and Burkhart threatened Petitioner with inflicting lethal injury on Barbara Storie when Petitioner was forced to give up his license. The state did not appear on behalf of the administratrix of Choate's estate.

JURISDICTION.

The US Court of Appeals Second Circuit Decision was filed October 15, 2004.

This Court has Jurisdiction under 28 U.S.C. Section 1254(1)

STATEMENT OF THE CASE.

The District Court's reliance on New York Law did not survive on appeal. These references are disposed of by Second Circuit decision in U.S. v. Vazquez 145 F. 3d 1998 and New York Penal Law 240.70 both clear that state laws are preempted by FACE , and survive only if they enforce the same objective as FACE.

The question of the specific intent requires a factual approach. Petitioner is an Obstetrician/Gynecologist Certified by the American Board of Obstetrics and Gynecology and within this Petitioner is highly specialized in Adolescent Obstetrics and Gynecology.

Adolescent Obstetrics and Gynecology would require as basic requirements the ability to diagnose pregnancy of an adolescent, ability to offer an abortion if the patient so desires, ability to render prenatal care and delivery when desired, and offer referral for adoption if needed. Petitioner met these requirements and soon became very popular. Petitioner's practice nearly doubled after the first year, and then was showing an expected 50% yearly growth. Gouverneur had the highest incidence of adolescent pregnancies in New York State and this is how Petitioner- experienced in this field - got to the town and E.J. Noble Hospital through the National Health Corps.

The growth of the practice invited other reproductive care providers. Fausto Innamorati, M.D. an Ob/Gyn subspecialized in maternal-fetal medicine i.e. an expert in complicated pregnancy decided to join Petitioner and started to see patients in the office, regularly reviewed ultrasound reports, and

complicated cases, and filed an application to join the hospital staff as Petitioner's associate.

The growth of the practice to a great extent consisted of pregnant adolescents. These girls soon had a presence in the hospital. When the defendants broke up the maternity service 20 pregnant adolescents were waiting for delivery of their babies.

For most defendants adolescent pregnancy was not only not permissible, but simply not existing. The basis for a clash between the defendants and the pregnant adolescents was all set.

From here on the only difference in the defendant's intent and other FACE violators intent is that these defendants did not zero in on the girls seeking abortion. The subgroup opting for abortion was done away with it fast and quiet, and faded away avoiding conflict.

The problem broke out with the group heading for the delivery room. A highly visible, and ever growing group of pregnant children.

The defendants response was block and lock first with increasing administrative restrictions, later with increasing violence. The second obstetrician was placed under Petitioner's supervision, with nobody knowing except the state defendants. Petitioner's access to the maternity ward was blocked by the defendants and the defendants referred Petitioner's patients to the second obstetrician. Same time since the second obstetrician was non-compliant with the supervision by petitioner, the state defendants revoked his license.

Petitioner's patients were waiting for the other obstetrician and the babies started to die. Soon the hospital obstructed the entry of any pregnant woman for reproductive service.

Meanwhile the defendants stalked the pregnant adolescents. The letters the children wrote were intercepted their mothers were called in their homes and harassed, the children were threatened that they will be left alone when in labor. Defendants and their agents were continuously present in the foyer in front of Petitioner's office harassing pregnant women first only adolescents later all patients.

Petitioner and his staff and his patients were treated with scorn Petitioner's papers were repeatedly searched and seized. Defendant Leader acknowledged that while blocking petitioner's access to the maternity ward, Leader used petitioner's name as an expert witness in a medical malpractice case. Richard Aubry, M.D. of the State University and other State University Physicians gave Petitioner letters of recommendatios - to take his practice elsewhere. The Health Department wanted the same: to move Petitioner elsewhere. The same Aubry acknowledged that petitioner's statistics in the hospital were very good and his outcomes favorable. Yet he simply did not release those statistics to petitioner claiming those are compiled for the hospital. Defendant Leader when their way crossed with petitioner always - even today - laughed laud "ha-ha-ha, ha-ha-ha, joke!"

When petitioner went to court, defendants filed a motion to appoint a guardian ad litem for petitioner.

This Court traditionally has a factual approach to intent. U.S. v. Staples 511 U.S. 600.

Connecting the dots we can see the defendants' intent: to make the treatment of pregnant adolescent girls impossible in the hospital first by a series of malicious mischiefs belittling and ridiculing the children and their care providers, and later a series of ever wilder violent acts.

Defendant Burkhart seized the chart of a mother when her baby was transferred from the pediatrician who received the baby. The baby died September 12, 1995. On the hearing in the Health Department on June 11, 1997 Burkhart asserted the things petitioner Innamorati and the sonographer talked about did not interest him.

Defendant-Appellee Choate and Conole seized the records of Barbara Storie, mentioned above, a pregnant diabetic and hypertensive patient. Burkhart prevented reproductive care for Storie and both her hypertension and diabetes became critical This assault was so violent that US Senator Alfonse D'Amato intervened in the Health Department, to obtain proper care for Storie. This time Burkhart and accomplices in the Health Department threatened Petitioner that if he does not give up his license they will continue to obstruct Storie's care. This is how the Defendant-Appellees obtained their "defense" the apparent reason the Court of Appeals finds no requisite intent.

The Health Commissioner used the paper Petitioner was forced to sign immediately to obstruct the investigation by US Senator Alfonse D'Amato.

An additional facet of Adolescent Obstetrics and Gynecology is prevention of child abuse and sexual abuse. As part of reproductive care petitioner acts as a prosecution expert.

The official complaints the Court of Appeals recognizes as suppressed are specific complaints originating from the core of reproductive care, and suppression of this complaints proves a special intent to interfere with this reproductive care. The Health Department intercepted Petitioner's reports on child abuse and sexual abuse. Petitioner took the matter to the New York State Supreme Court. Sharpe v. State of New York Department of Health. St. Lawrence County Index No: 102997. At the conclusion of the matter, the Petitioner was found responsible for filing reports on child abuse and sexual abuse. This was December 18, 1998, a year and a half after the licensing action. The Defendant-Appellees abrogated their defense with this conduct, and Petitioner achieved through court the solution of a few abuse cases.

Throughout the years following the destruction of the Maternity Service in the hospital the Defendants never made an attempt to reconcile with the adolescents they threw out. These pregnant adolescents are still present in town but if they chose to deliver their babies they avoid E.J. Noble Hospital.

When the first mother was killed on January 15, 2000 the pathologist Phillip Bridgman, M.D. noting the severe internal injuries the mother suffered in the Defendant-Appellees' hands asked for a forensic autopsy. Bridgman was removed from the hospital and his practice was seized by State University physicians.

When the second mother was inflicted with the gas gangrene bacterium the state physicians produced false laboratory reports indicating Hyperthyroidism, and placed the mother on antithyroid medication to cover the symptoms.

When Petitioner took the mother out of the Defendant-Appellees' hands the patient demanded a repeat of the test now known as false. The subsequent test even in the Defendant-Appellees' own proved the first set a fraud.

Throughout the years following the destruction of the Maternity Service, the state physicians never made an attempt to reconcile with the mothers in Gouverneur and their care givers.

The New York State Department of Health is embraced in a losing battle with the State of Vermont for the maternity care in the region. The State of New York is losing. The majority of pregnant women when in need of treatment in higher level facility selects the University of Vermont.

Throughout the years following the destruction of maternity care the Health Department never attempted to reconcile with pregnant women in the area or their care givers. The State continued a senseless witch hunt against reproductive care providers. The Health Department forced out Raoul Artal, M.D. the Professor of Ob/Gyn at SUNY Syracuse Health Science Center, now SUNY Upstate Medical University. Artal has never been replaced with comparably capable specialist Dr. Innamorati's application for joining the E.J. Noble Hospital was made in 1995. Since then, the application is in a drawer of the defendant-appellees, who refused even to talk to him.

As mentioned above two mothers were infected with the gas gangrene bacterium.

The gas gangrene bacterium is a weapon of mass destruction.

All maternal infections with the gas gangrene bacterium are reported worldwide, even in developing countries.

In addition all gas gangrene cases are reported and also published in Medical Journals. It is Petitioner's responsibility to report and publish the two cases.

REASONS FOR GRANTING THE PETITION

The Court of Appeals acknowledges, that the Defendant-Appellees caused injuries. All the injuries were inflicted specifically on pregnant mothers, seeking reproductive care, and their care providers. The Defendant-appellees continue to inflict injuries and their specific target is pregnant women seeking reproductive care. That should satisfy the specific intent requirement even against Defendant-Appellees refusal of admission. and the case should go ahead after filing an amended and supplemented complaint. The Second Circuit upheld a civil suit against the Health Commissioner, DiBlasio v. Novello 344 F.3d 292 (2d Cir. 2003) Cert. Denied Novello v. DiBlasio 2004 U.S. LEXIS 2770 (U.S. April 19, 2004)

DATED: January 9, 2005.

Respectfully submitted:

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term 2003

Argued March 4, 2004 Decided October 15, 2004

Docket Nos. 01-7044, 01-9019

THOMAS SHARPE, M.D.,

Plaintiff-Appellant,

—against—

CHARLES P. CONOLE, ROBERT LEADER, R. MIKE LAWLER, VIRGILIO RIGOR, DONALD SCHUESSLER, M.D., JANUSZ MROZ, M.D., STEVE BURKHART, M.D., SUNY SYRACUSE HEALTH SCIENCE CENTER, NYS DEPT OF HEALTH, BARBARA DEBUONO, M.D., Commissioner, MARTHA ELLEN, also known as Martha Allen, WATERTOWN DAILY TIMES, VIJAY KUMAR, M.D., and JUDITH J. CHOATE, Administratrix of the Estate of John W. Choate,

Defendants-Appellees,

JOHN W. CHOATE,

Defendant.

Before:

WALKER, *Chief Judge*, LEVAL, *Circuit Judge*, and GLEESON, *District Judge*.[1]

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[1] The Honorable John Gleeson of the United States District Court for the Eastern District of New York, sitting by designation.

Pro se plaintiff Thomas Sharpe appeals from a judgment of the United States District Court for the Northern District of New York (Thomas J. McAvoy, District Judge), granting defendants' motions to dismiss and for summary judgment. The judgment is affirmed.

THOMAS SHARPE, pro se.

ANDREA OSER, Assistant Solicitor General for the State of New York (Eliot Spitzer, Attorney General of the State of New York; Caitlin J. Halligan, Solicitor General; Daniel Smirlock, Deputy Solicitor General), Albany, New York, for Defendants-Appellees SUNY Syracuse Health Science Center, NYS Dept. of Health, Barbara DeBuono, M.D., Steve Burkhart, M.D., and Judith J. Choate, and Defendant John W. Choate.

MARK J. SCHULTE, Hancock & Estabrook, LLP, Syracuse, New York, for Defendants-Appellees Charles P. Conole, Robert Leader, Virgilio Rigor, Donald Schuessler, M.D., Vijay Kumar, M.D., R. Mike Lawler, and Janusz Mroz, M.D.

S. PAUL BATTAGLIA, Bond, Schoeneck & King, LLP, Syracuse, New York, for Defendants-Appellees Martha Ellen and Watertown Daily Times.

JOHN GLEESON, *United States District Judge*:

Pro se plaintiff Thomas Sharpe appeals from the district court's judgment dismissing his action. The complaint under the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248 ("FACE Act"), was based on various alleged acts of the defendants, including harassment of Sharpe and his patients, interference with patient care and education, suspension of Sharpe, and revocation of his medical license. For the reasons stated below, the judgment of the district court is affirmed.

BACKGROUND

Sharpe was a physician specializing in obstetrics and gynecology at E.J. Noble Hospital (the "Hospital"), in Gouverneur, New York, beginning in 1994. On May 22, 1996, Sharpe's privileges were suspended at the Hospital pending a New York State Department of Health investigation. Sharpe appealed the suspension in state court. After an administrative review by the state court, Sharpe's privileges were permanently suspended and he surrendered his license to practice medicine in New York on June 11, 1997.

Sharpe then brought this action, alleging that, on various occasions, the defendants violated the FACE Act, and conspired to do so, by, inter alia, (1) interfering with his ability to perform amniocenteses and ultrasounds, and his ability to properly care for his patients; (2) stealing or misdirecting patient records; (3) preventing childbirth education at the Hospital; (4) blocking Sharpe's access to his patients and the hospital, including equipment and staff necessary for training, and blocking his patients' access to the hospital for reproductive care and testing; (5) stalking

and harassing his patients, including pressuring them to transfer to other physicians; (6) coercing the medical staff to drop objections to the obstruction of medical care in the Hospital; (7) retaliating against him for his official complaints and/or suppressing complaints; and (8) causing him to be removed from the medical staff at the Hospital.

DISCUSSION

I. *The Standard of Review*

We review the district court's grant of defendants' motions to dismiss and for summary judgment de novo. *E.g.*, *Brody v. Vill. of Port Chester*, 345 F.3d 103, 108 (2d Cir. 2003) (summary judgment). Because Sharpe's complaint was filed pro se, we construe it broadly and interpret it to raise the strongest arguments it suggests. *E.g.*, *Weixel v. Bd. of Educ.*, 287 F.3d 138, 146 (2d Cir. 2002). For purposes of the motions to dismiss, we accept as true the allegations in Sharpe's complaint. *E.g.*, *Gant v. Wallingford Bd. of Educ.*, 69 F.3d 669, 672-73 (2d Cir. 1995). As to summary judgment, in determining whether a genuine issue of material fact exists, we resolve all ambiguities and draw all factual inferences in favor of Sharpe. *E.g.*, *Richardson v. N.Y. State Dep't of Corr. Serv.*, 180 F.3d 426, 436 (2d Cir. 1999).

II. *The FACE Act Claim*

We have carefully reviewed Sharpe's contentions on appeal and find them to be without merit. We write only to address the motivation required by the FACE Act. In granting summary judgment for the defendants on December 7, 2000, the district court held that to state a claim under the FACE Act, Sharpe had to allege, inter alia, that

the defendants intentionally used force to obstruct access to a reproductive health facility "because the interfered-with person is or has been obtaining or providing reproductive health services, or in order to intimidate such person or any other person or class of persons from obtaining or providing reproductive health services." *Sharpe v. Conole*, 123 F. Supp. 2d 87, 88 (N.D.N.Y. 2000). In so holding, the district court rejected Sharpe's argument that the only intent required to state a claim under the FACE Act was the intent to obstruct and interfere. *Id.* at 89.

The FACE Act provides that whoever

> by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services . . . shall be subject to the penalties [provided for in the Act].

18 U.S.C. § 248(a)(1). Therefore, by its very terms, the FACE Act requires that a defendant act *because* the interfered-with person was seeking, obtaining, or providing, or had obtained or provided, or might obtain or provide, reproductive health services. The intent to injure, intimidate, or interfere is a separate intent requirement that must also be proved by a FACE Act plaintiff. But that intent alone will not suffice to make out a claim under § 248(a)(1) without a showing that the intent to injure, intimidate, or interfere existed because of the motivation specified by the statute. Our precedent is consistent with this plain reading of the statute. *See New York v. Operation Rescue Nat'l*, 273 F.3d 184, 194 (2d Cir. 2001) (noting no

dispute that defendant's actions were "motivated by the fact that the clinics provide[d] reproductive health services"); *United States v. Weslin*, 156 F.3d 292, 298 (2d Cir. 1998) ("No matter what their ultimate purpose in blockading the clinic may have been, the defendants do not deny—nor could they plausibly deny—that they meant to block the entrances to the Planned Parenthood clinic . . . and that they did so because they wished to prevent the clinic from performing abortions.").

Here, Sharpe did not allege that the defendants obstructed or interfered with his provision of reproductive services because Sharpe provided such services. Sharpe's claim under § 248(a)(1) must therefore fail.

CONCLUSION

For the foregoing reasons, the judgment is affirmed.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THOMAS SHARPE, M.D.

Plaintiff 99-CV-0971

- against -

CHARLES P. CONOLE; ROBERT LEADER MIKE LAWLER; VIRGILIO RIGOR, M.D.; VIJAY KUMAR, M.D.; DONALD SCHUESSLER, M.D.; STEVE BURKHART, M.D.; SUNY SYRACUSE HEALTH SCIENCE CENTER; NEW YORK STATE DEPARTMENT OF HEALTH; BARBARA DEBUENO, M.D. Commissioner; MARTHA ELLEN; and WATERTOWN DAILY TIMES

Defendants

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MEMORANDUM- DECISION
& ORDER

McAvoy, D.J.

In a prior Decision & Order familiarity with which is assumed the Court set forth the factual and procedural background of this action. See Sharpe v. Conole, 99-CV-971, March 31, 2000, Dkt. No: 70. *1

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*1 In that decision the Court, inter alia, dismissed the complaint against Defendants Lawler, Mroz, DeBueno, Choate, Burkhart, SUNY Syracuse Health Science Center The New York State Department of Health, the Watertown Daily Times and Martha Ellen.

*2 As defendants note, the Court considered the applicable statute of limitations in a prior Decision & Order and determined that the correct statue of limitation for this action is four years. See Sharpe v. Conole, 99-CV-971. March 31, 2000, Dkt. No. 70. Local Rule 7.1 (g) governs motions for reconsideration or reargument of orders that are not final. Local Rule 7.1 (g) provides that such motions must be served no later than 10 days after the entry of the challenged judgment. This motion was filed September 12, 2000, several months after the Court rendered a decision on the statute of limitations issue. Thus, Defendants' motion for reconsideration of the statute of limitations is time barred and will not be considered by the Court.

Presently before the Court is Defendants Conole, Leader, rigor, Kumar and Schuessler's motion pursuant to Fed. R. Civ. P. 12(c) to dismiss the remaining causes of action under the Freedom of Access to Clinic Entrances Act of 1994, 18 USCS # 248, ("FACE") for the following reasons: (1) the Complaint fails to state a cause of action under FACE because it does not allege the requisite intent; (2) Defendants' participation in state mandated quality assurance programs provides them with immunity from the present claims; (3) the present action is barred by plaintiff's written release; (4) Plaintiff's claim should be barred by a one-year statute of limitations. *2

Pursuant to Fed. R. Civ. P. 12(b)(6), the Court cannot consider the affidavits and exhibits submitted by both parties in support or in opposition to the instant motion without converting the motion to a motion for summary judgment. See e.g., Fonte v. Board of Managers of Continental Towers, Inc., 848 F. 2d 24 (2d Cir. 1990) On October 23, 2000, this Court issued an Order notifying the parties that it would convert the motion to dismiss to one of summary judgment. The Court further allowed the parties to submit additional materials in support or opposition to summary judgment within fourteen calendar days. The Court issued a second Order dated November 11, 2000 to ensure that plaintiff understood the potential ramifications of a summary judgment motion. Plaintiff submitted additional opposition papers in response to both orders. See Dkt. Nos. 100, 102, 103.

Accordingly the Court will consider the instant motion as a motion for summary judgment. In addressing the motion, the Court will apply the well settled standard for summary judgment, which need not to be reinstated here. See Roman v. Cornell Univ. 53 F. Supp. 2d 223, 232-33, (N.D.N.Y. 1999) Phipps v. New York State Dep't of Labor, 53 F. Supp. 2d 551, (N.D.N.Y. 1999) Riley v. Town of Bethlehem, 44 F. Supp. 2d 451 458 (N.D.N.Y.) 1999) Defendants first argue that claims against them should be dismissed because Plaintiff does not allege the intent necessary to set forth a prima facie case. To state a claim under 18 U.S.C. # 248 (a)(1), Plaintiff must allege three elements: use of threat of force or physical obstruction of a reproductive health facility; (2) that the obstruction intentionally injure, intimidate or interfere with persons ; and (3) that the defendant's actions be taken because the interfered with person is or has been obtaining or providing reproductive health services. See Unite States v. Balint, 201 F. 3d 928, 932 (7th Cir. 2000); 18 U.S.C. # 248.

Defendants argue, that although Plaintiff alleges that they acted with variety of unsavory motives (including improper financial gain, professional rivalry, personal animosity, the desire to find evidence for medical malpractice actions against Plaintiff, and intoxication, see Def. Mem. of Law at 5; see also Amended Complaint at pp. 2-3, 5-8; pp9-11 5-10, 13; pp 17-18, 2-7; p. 30, 3-7; pp 10-11, 10, 13; pp. 4-6, 20, 29.), Plaintiff's Amended Complaint does not allege that they were motivated by Sharpe's status as a provider of reproductive

care or a desire to deter people from receiving reproductive medical care. Without alleging this type of motivation, Defendants contend, Plaintiff has failed to state a claim.

Plaintiff responds that to prove intent under FACE he only needs to allege that a defendant intended to obstruct and interfere with the obtaining and provision of reproductive health services, see U.S. v. Weslin, 156 F. 3d 292, 298, (2d Cir. 1998) and that the Amended Complaint alleges such action. See Pl. Mem. of Law at 2.

In Weslin the Second Circuit upheld a criminal conviction under FACE based on a sit-down protest that blocked entrances to a clinic providing abortion services. Defendants appealed their conviction, arguing, inter alia, that they did not have the requisite mens rea, because their motivation was to save the lives of unborn children rather than interfere with reproductive services. See Weslin, 156 F. 3d at 298. The court recognized that the defendants "meant to block the entrance to the Planned Parenthood clinic... and they did so because they wished to prevent the clinic from performing abortions" Id. The court therefore found that the actual motivation behind the Defendants' actions was irrelevant so long as they "intended to obstruct and interfere with obtaining and providing reproductive health services." Id; see also United States v. McDaniel, 175 F. 3d 1009, 1999 WL 177275, at *1 (2d Cir. Mar 26, 1999) (table) ("(The Weslin holding) follows from the statute itself, which proscribes interfering with a person's access to reproductive services 'because that person is or has been ...obtaining or providing reproductive services.'")
(internal citations omitted)

The cases relied on by Plaintiff are factually inapposite, they involve attempts to physically bar clinic entrances because those clinics provided reproductive services, the type of conduct FACE was enacted to address. See e.g. United States v. Hart, 212 F.3d 1067 (8th Cir, 2000) (parking Ryder trucks in front of abortion clinic in attempt to save unborn babies) ; McDaniel, 175 F3d 1009, 1999 WL 177275, at *1 (blockading clinic in order to prevent people from receiving and providing abortions); U.S. v. Operation Rescue Nat'l 111 F. Supp. 2d 948, 958 (S.D. Oh. 1999) (physically obstructed entrance to clinic); United States v. Wilson, 2 F. Supp. 2d 1170, 1171 (E.D. WI) (same), aff'd 154 F. 3d 658 (7th Cir. 1998), cert. denied, 525 U.S. 1081 (1999)

Moreover, Plaintiff's interpretation of Weslin to mean that he has to show only that Defendants actually interfered with or obstructed his provision of reproductive services rather than that they acted in this way because he provided such services, is incorrect. See 18 U.S.C. #248(a)(1); see also McDaniel, 175 F.3d 1009 1999 WL 177275, at *1 ("Defendants stipulated that their purpose in blockading the clinic was 'in order to prevent people from receiving and (the clinic staff) from providing abortions.' Defendants' actions therefore , fall squarely within the ambit of the statute.") U.S. v. Lynch, 162 F.3d 732 (2d Cir, 1998); Operation Rescue Nat'l 111 F. Supp. 2d at 958 ("Finally the legislative history and courts have noted that the phrase 'because that person is or has been ... providing reproductive services' requires that the (plaintiff) prove that the defendant's actions were motivated by the fact that a person is or has been obtaining or providing such services." (Citations omitted); Wilson, 2 F.

Supp. 2d at 1171 (finding that motivation of protecting unborn babies falls within the definition of "reproductive services" for purpose of FACE's intent element.)

Plaintiff's interpretation of FACE's mens rea standard (such that one only need show obstruction to prove intent) could lead to ridiculous results. For example, if a building housing medical offices providing reproductive services was condemned for public safety reasons such that access to the building was "obstructed, under Plaintiff's reading of the intent requirement, the individuals responsible for preventing individuals from entering the unsafe building could be found liable under FACE because they intended to keep medical providers and patients out of the building and, in doing so, interfered with immediate reproductive services. Similarly if a bomb threat required immediate evacuation of a reproductive clinic, individuals escorting patients and medical service providers out of the facility and/or preventing individuals from entering the facility could be liable under FACE. Contrary to Plaintiff's assertions , in this circumstances , the fact that an individual physically obstructed or literally interfered with provision of reproductive services would not suffice to establish a violation of FACE as the obstruction or interference was because of threat to patients and providers safety rather than because because the patients were receiving and the providers providing reproductive services.

In this case, Plaintiff has not alleged that Defendants obstructed or interfered with the provision of reproductive

services because Plaintiff provided such services (in fact Plaintiff alleges in part that his patients were unlawfully referred to other obstetricians or to providers in Syracuse, New York whom he considered inept), but rather the facts indicate that plaintiff was prevented from providing certain services due to hospital policy (amniocentesis procedures were done in Syracuse) and/or as part of a quality assurance program mandated by New York Law. *3 See N.Y. Educ. Law #6527; N.Y. Public Health Law ## 2805 j-m, 2807-i; N.Y. Mental Hyg. Law # 29.29; 10 N.Y. Code rules and reg. ## 405.6, 407.6 . In these circumstances, a reasonable fact finder could not find that Defendants' actions satisfy the intent element requirement of FACE.

The legislative history of FACE supports this decision, as well as the Court's interpretation of Weslin, 156 F. 3d at 298 regarding FACE's intent element. The legislative history is peppered with references to violence and examples illustrating that the purpose of the act is to prevent the growing violence accompanying the debate over the continued legality and availability of abortion and other reproductive services."

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*3 As discussed in previous decisions of this case, E.J. Noble suspended Plaintiff's privileges on May 22, 1996, pending a State Department of Health investigation. Apparently Plaintiff's privileges were renewed on June 24, 1996, and then his inpatient privileges were suspended on July 7, 1996. Plaintiff surrendered his license to practice in New York on June 11, 1997.

H.R. Rep. No. 306, 103d Cong. 2d Sess. 6-7 (1994), reprinted in 1994 U.S.C.A.N. 699. The report states, "(i)n order to narrowly tailor this legislation to those activities found by the Committee to warrant new federal remedies, the act requires that the offender be motivated by the involvement of the victim or others in obtaining or providing reproductive health services" Id. at 709. The legislative history clearly indicates that Face was not enacted to address the prohibition of certain services by a medical provider pursuant to internal hospital regulations and/or quality assurance programs.

Plaintiff has provided no evidence that Defendants used force, threats of force, or physical obstruction to interfere with his provision of medical services because he is or was providing reproductive health services. See, e.g., Balint 201 F. 3d at 932. Thus taking all inferences in favor of Plaintiff, a reasonable jury could not conclude that Defendants violated FACE. Accordingly Defendants" motion for summary judgment is GRANTED and Plaintiff's Amended Complaint is dismissed in its entirety.

III. Conclusion

For the foregoing reasons, Defendants' motion for summary judgment is GRANTED and Plaintiff's Amended Complaint is dismissed in its entirety.

IT IS SO ORDERED.

December 7, 2000.
Binghampton, New York

" S "

Hon. Thomas J. McAvoy
U.S. District Judge